



CITY OF PHILADELPHIA

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June 6, 2013

VIA ELECTRONIC MAIL

Isaiah Thompson
Axis Philly
20 N. 3rd Street #702
Philadelphia, PA 19106
Isaiah@axisphilly.org

Re: Thompson CP 2013-0409; 0410

Dear Mr. Thompson:

Thank you for writing to the City of Philadelphia (“City”) Sheriff’s Office with your requests for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 et seq., (the “Act”).

On April 30, 2013, the City received your requests for the following records:

- Case ledgers for any and all properties taken to sheriff sale via tax foreclosure by the City or its co-counsel in 2012 and 2013 to date. **[Item 1]**
- Any and all records pertaining to fees imposed by the Philadelphia Sheriff Office on tax foreclosure sales in 2012 and 2013 to date. **[Item 2]**
- Any documents describing or detailing how the city set opening bids in tax foreclosure sheriff sales in 2012 and 2013 to date. **[Item 3]**
- Case ledgers for any and all properties taken to “Tax Collection,” “Tax Revenue,” and “Tax Collection/GRB” sheriff sales in 2011, 2012 and 2013 to date. **[Item 4]**
- A digital copy of any and all digital files containing current ledger balances for all properties taken to tax foreclosure sheriff sale in 2011, 2012 and 2013. **[Item 5]**

On May 7, 2013, the City informed you that it required an additional thirty calendar days to respond to your requests. This constitutes the City’s response to your requests.

Your requests are granted in part, and denied in part, as set forth more fully below.

Response to Items 1 and 4: Subject to, and without waving the grounds of denial set forth below, as a courtesy, please be advised that information about all properties subject to sheriff’s sales is publically available for in-person review via the Sheriff’s Civil System. The Sheriff’s Civil System is available to the public during business days between 8:30AM and 3:30PM, and can be accessed in-

person at the Philadelphia Sheriff's Office, 100 South Broad St., 5th Floor, Philadelphia PA 19110. Please be advised that there are no digital copies of the information available on the Sheriff's Civil System.

To the extent your request for "case ledgers" seeks information other than what is available on the Sheriff's Civil System, your requests are denied as insufficiently specific. 65 P.S. § 67.703. Moreover, it is not a denial of access under the Act if the records requested do not exist. *Cf. Jenkins vs. Pennsylvania Department of State*, Docket No. AP 2009-0065 (OOR April 2, 2009). The City is not required to create records in order to respond to a Right to Know Request or "compile, maintain, format or organize a record in a manner in which [the City] does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

Subject to and without waiving the forgoing, your request is further denied to the extent you seek:

- Records exempt from disclosure under the Act pursuant to 65 P.S. § 67.708(b)(16) and 65 P.S. § 67.708(b)(17).
- Records reflecting "[a] internal, predecisional deliberations of an agency, its members, employees or [b] predecisional deliberations between agency members, employees or officials and members, employees, or officials of another agency . . . or [c] any research, memos or other documents used in the predecisional deliberations[.]" 65 P.S. § 67.708(b)(10)(i)(A);
- "[n]otes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own use, including telephone message slips, routing slips and other materials that do not have an official purpose." 65 P.S. 67.708(b)(12).
- Communications protected by the attorney/client privilege, the work product doctrine, or the deliberative process privilege, as such documents are not public records as that term is defined under the Act, 65 P.S. § 67.102; *see also, e.g., Redland Soccer Club v. Department of the Army*, 55 F.3d 827, 854 (3d Cir. 1995);
- "[I]nformation from the solicitor relating to pending or impending litigation." *See, e.g., Schenck v. Twp. of Center*, 893 A.2d 849, 853- (Pa. Commw. Ct. 2006) (reading the Right-to-Know Act *in pari materia* with the Sunshine Act and holding that "all information from the solicitor relating to pending or impending litigation is inaccessible").
- Records reflecting the home addresses of individuals. Under 65 P.S. §67.708(b)(1)(ii) of the Act, a request for a record that "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual" may be denied. The City of Philadelphia continues to believe that the release of home addresses constitutes such a risk, and has redacted such information in the past, and will continue to do so pending the outcome of the City's appeal of *Purcell v. City of Philadelphia*, OOR Dkt. AP 2009-0263. Finally, information concerning home address constitutes personal identifying information when disclosed in connection with financial information. 65 P.S. § 67.708 (b)(6)(i)(A); 65 Pa.C.S. § 67.708(c); 65 Pa.C.S. § 67.101 (defining personal financial information to include "other information relating to an individual's personal finances"); *cf. Dep't of Conservation & Natural Res. v. Office of Open Records*, 1 A.3d 929, 931-942 (Pa. Commw. 2010).¹

¹ This ground of denial is not intended to refer to the addresses of properties sold at Sheriff's Sales.

- Records reflecting personal identification information exempt from disclosure under the Right to Know Act, including but not limited to, bank account and home telephone numbers, and other information related to an individual's personal finances and/or beneficiary information, where appropriate. 65 P.S. § 67.708(b)(6)(i)(A), (B)

The City reserves its rights to assert bases for denial if responsive records are located after a review of such records.

Response to Item 2: Subject to, and without waiving the grounds of denial set forth below, as a courtesy, please be advised that fees associated with Sheriff's sales are set by Pennsylvania statute and portions of the Philadelphia City Code. The relevant portion of the City Code, §10-1002, is attached. Please be advised that the relevant Pennsylvania statute is 42 P.S. § 21101, *et. seq.*

Your request for "any and all records pertaining to fees" is insufficiently specific such that the City is unable to begin identifying records responsive to your request. 65 P.S. § 67.703. This is particularly the case as you have not identified a time period for your request and/or the types of records you are seeking.

The Act requires, among other things, that a written request "identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested . . ." 65 P.S. § 67.703.² The requirement of specificity is necessary to (1) ensure that a requestor provides enough information so that "an agency can determine whether to grant or deny the request[;]" *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa. Commw. 1996), and (2) "to prevent agencies from suffering undue interference and obstruction of their daily functions; . . . [which] would be unavoidable if agency officials always could be subjected to broad and unlimited requests for documents and records." *Mooney v. Temple Univ. of the Commonwealth Sys. Of Higher Educ. Bd. Of Trustees*, 292 A.2d 395, 397 n.8 (Pa. 1972) ("requests for inspection [must] be specific and particular seeking disclosure of named documents or records rather than broad and unlimited requests for undefined bodies of documents or records"); *see also, e.g., Arduino v. Borough of Dunmore*, 720 A.2d 827, 831 (Pa. Commw. 1998) (holding that a request for "'all records' related to the disbursement of the funds for [certain] public projects" lacked sufficient specificity), *appeal denied*, 741 A.2d 195 (Pa. 1992); *Hunt. v. Pa. Dep't of Corr.*, 698 A.2d 147, 149 (Pa. Commw. 1997) (holding that requests, including a request for all documents given by Department of Corrections to inmate and by inmate to Department, lacked sufficient specificity).

Pennsylvania courts have compared such broad, sweeping requests to discovery-type requests which, while potentially proper in the context of civil litigation, are improper under the Act. *Berman v. Pa. Convention Ctr. Auth.*, 901 A.2d 1085, 1089 (Pa. Commw. 2006) (holding that request for "[t]he most recent plans, construction, and design documents' relating to" the convention center expansion was "more in the nature of a discovery request than a proper request for public records"); *Associated Builders and Contractors, Inc. v. Pa. Dep't of Gen Servs.*, 747 A.2d 962, 965-66 (Pa. Commw. 2000) (holding that requests "akin to document requests under the civil discovery rules, *i.e.*,

² This language is identical to sufficient specificity requirement in § 2(c) of the prior Right-to-Know Law, 65 P.S. 66.1, *et seq.* Accordingly, the case law interpreting this language in the context of the old Right-to-Know Law remains binding. *Dep't of Conservation & Natural Res. v. Office of Open Records*, 1 A.3d 929, 940-941 (Pa. Commw. 2010) (interpreting language in the new Act by relying on prior precedent holding that "[t]he language in the two definitions is virtually identical. Faced with a prior judicial interpretation . . . by . . . the Pennsylvania Supreme Court of the account/voucher/contract language in the RTKL, even though issued in the context of the Old Law, we are not at liberty here to ascribe a different meaning to the same language.").

‘any and all documents relating to [subject matter]’” lack sufficient specificity); *accord PSP v. OOR*, 995 A.2d 515, 517 (Pa. Commw. 2010) (“The portion of the request seeking any and all records, files or communications [concerning subject matter] is insufficiently specific for the PSP to respond to the request.”); *Pa. Hous. Fin. Agency v. Ali*, 43 A.3d 532 (Pa. Commw. 2012) (finding request for all correspondence regarding a subject insufficiently specific). Such broad requests have been, and will be, denied.

It would place an unreasonable burden on the City to go through all of its records for an extended period of time without knowing, with sufficient specificity, what type of records are being sought. *Cf. Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa. Cmwh. 2011) (holding that requests seeking emails between certain agency officials and employees for the past one and five years without sufficiently identifying the subject matter were insufficiently specific, and concluding that “it would place an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, what Township business or activity the request is related [to].”)

As your request is insufficiently specific, the City is unable to assert all applicable grounds of denial and reserves the right to do so if your request is construed as seeking specific records after a review of such records. Subject to, and without waiving the foregoing objections, your request could encompass various exempt records and it is specifically denied to the extent that you seek:

- Records containing personal identifying information exempt from disclosure pursuant to 65 P.S. § 67.708(b)(6) including (but not limited to) social security and/or federal tax identification numbers, bank account numbers, home addresses, cell phone numbers, home telephone numbers, and personal email addresses.
- Records reflecting “[1] internal predecisional deliberations of an agency, its members, employees [2] predecisional deliberations between agency members, employees or officials and members, employees, or officials of another agency . . . or [3] any research, memos, or other documents used in predecisional deliberations.” 65 P.S. § 67.708(b)(10)(i)(A).
- Records reflecting the home addresses of individuals. Under 65 P.S. § 67.708(b)(1)(ii) of the Act, a request for a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual” may be denied. The City of Philadelphia continues to believe that the release of home addresses constitutes such a risk, and has redacted such information in the past, and will continue to do so pending the outcome of the City’s appeal of *Purcell v. City of Philadelphia*, OOR Dkt. AP 2009-0263. In addition, certain home addresses are redacted to protect personal identifying information. 65 P.S. § 67.708 (b)(6)(i)(A); 65 Pa.C.S. § 67.708(c); 65 Pa.C.S. § 67.101 (defining personal financial information to include “other information relating to an individual’s personal finances”); *cf. Dep’t of Conservation & Natural Res. v. Office of Open Records*, 1 A.3d 929, 931-942 (Pa. Commw. 2010).
- Notes or working papers exempt from disclosure pursuant to 65 P.S. § 67.708(b)(12).

- Records relating to noncriminal investigations exempt from disclosure pursuant to 65 P.S. § 67.708(b)(17).³
- Records exempt from disclosure pursuant to the Uniform Construction Code. Pursuant to the Uniform Construction Code, the City “may prohibit release of applications received, building plans and specifications, inspection reports and similar documents to the public under” the Act. 34 Pa. Code § 403.85(e);⁴ *see also* 65 P.S. § 67.102 (defining public record); 65 P.S. § 67.305(a)(3); 65 P.S. § 3101.1.

Response to Items 3 and 5: The Sheriff’s Office has no documents responsive to these portions of your request. As a result, the City does not have any records responsive to these portions of your request in its possession, under its custody or within its control. “It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them . . .” *Jenkins vs. Pennsylvania Department of State*, Docket No. AP 2009-0065 (OOR April 2, 2009). To the extent your request is for the City to create or compile a record which does not already exist, your request is denied. The City is not required to create records in order to respond to a Right to Know Request or “compile, maintain, format or organize a record in a manner in which [the City] does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705.

Should you wish to contest any part of this decision, you may file an appeal with the Office of Open records as provided for in 65 P.S. § 67.1101. You have 15 business days from the mailing date of this response to challenge the City’s response. Please direct any appeal to the Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225.⁵

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,



Benjamin S. Mishkin
Assistant City Solicitor

Attachments

cc: Joseph Vignola, Open Records Officer, Sheriff’s Office

³ To the extent the record requested relates to an investigation that is criminal in nature your request is further denied pursuant to Section 708(b)(16).

⁴ The City has adopted the Uniform Construction Code by Local Ordinance, Bill No. 040465 (2004).

⁵ To appeal the reservation of denial pursuant to 65 P.S. § 67.708(b)(16) regarding records relating to a criminal investigation, you may file an appeal with the Philadelphia District Attorney’s Office as provided in 65 P.S. § 67.1101 and 65 P.S. § 503(d)(2). You have 15 business days from the mailing date of the City’s response to challenge the response. Please direct any appeal to DA Appeals Officer, Attn: Brad Bender, Three South Penn Square, Philadelphia PA 19107-3499 and copy the undersigned.